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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 574

SAMUEL M. COOMBS, Trustee in Bankruptcy
of the Spier Aircraft Corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA.

**PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF.**

MAX L. ROSENSTEIN,
Counsel for Petitioner,
60 Park Place,
Newark 2, New Jersey.

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Supreme Court of the United States

OCTOBER TERM 1943.

No. .

SAMUEL M. COOMBS, Trustee in Bankruptcy
of Spier Aircraft Corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

*To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Summary Statement of Matter Involved.

1. Petitioner challenges the correctness of a decision by the United States Circuit Court of Appeals for the Third Circuit which affirmed an order (Transcript, p. 5a) of the United States District Court for the District of New Jersey, vacating a temporary restraint which it had issued against the representatives of the United States Government and officers of the United States Navy who had been designated to take possession of property requisitioned under "An Act of Congress of October 16, 1941, as amended by the Act of March 27, 1942, and the Executive Orders of the President" (Transcript, p. 60a), and granted the peti-

tion of the government, directing Samuel M. Coombs, Jr., receiver (now trustee) of Spier Aircraft Corporation, bankrupt, to comply with the order of requisition.

2. The United States Circuit Court of Appeals for the Third Circuit ruled, among other things set forth in its opinion (Transcript, pp. 65-73), that property which had passed into the exclusive custody and control of the Bankruptcy Court for administration was nevertheless subject to requisition and seizure by the government under orders or directives emanating from the Executive branch of the government.

3. On January 22, 1943, a petition in involuntary bankruptcy was filed against the bankrupt in the United States District Court for the District of New Jersey. On January 23, 1943, petitioner was appointed receiver of the bankrupt, and, upon qualifying, took possession of its assets located at No. 200 Central Avenue, Jersey City, Hudson County, New Jersey, where it had been engaged in business in the manufacture of aeronautical parts and equipment intended entirely in aid of the war effort. It was a subcontractor engaged in the manufacture of these articles for prime contractors.

4. The assets which came into the hands of petitioner consisted of a complete plant, in which was set up machinery, equipment, machine tools, wiring, belting and electric installations, constituting a complete manufacturing unit. In addition, there was a lease to the premises, the trade name of the bankrupt, its accounts receivable, good will and other intangible assets.

5. By leave of Court, petitioner conducted the business of the bankrupt to a limited extent.

6. On February 9, 1943, an order of adjudication in bankruptcy was entered.

7. Efforts were made to promote a prompt sale of the bankrupt as a complete unit and going concern, in order to put the plant to its most advantageous use, and to realize the highest possible price therefor. The machinery, tools and equipment, set up as they were, were greatly in demand.

8. In furtherance of the end sought to be attained, and in cooperation with governmental agencies, namely, the War Production Board and the Office of Price Administration, petitioner solicited a bid for the business as a complete entity, resulting in the submission of an offer based on maximum ceiling prices fixed by the office of Price Administration (Transcript, pp. 13a-14a), sponsored by Defense Plant Corporation, a governmental agency, in the name of Simmonds Aerocessories, Inc., to purchase the machine tools and equipment of the bankrupt for the sum of \$132,300.00. The proposal of purchase (Transcript, pp. 13a-15a), stated, among other things, that if accepted, the machine tools and equipment were to be leased by Defense Plant Corporation to Simmonds Aerocessories, Inc. By leave of Court, a hearing was fixed for March 9, 1943, before the Referee, upon notice to all parties in interest, including the War Production Board, the Office of Price Administration, and other governmental agencies, for the consideration of the bid referred to, and any other bids which might be received for all of the assets as a going concern (Transcript, p. 16a).

9. On or about March 6, 1943, the Navy Department served notice of requisition upon petitioner, issued under the statute referred to in paragraph "1" hereof, by the

terms of which certain designated officers were authorized and commanded to take possession of the property mentioned in the requisition, relegating all claimants for compensation for the property in accordance with the methods set forth in the statute.

10. At the time of the requisitioning, petitioner was in possession of the property involved. At no time had he released the same, and he was still in possession on March 9, 1943, when the hearing on the application to consider and accept bids for all of the assets as a complete unit and going concern came on before the Court.

11. On March 9, 1943, immediately prior to the hearing on the application for leave to consider and accept bids, petitioner applied to and obtained from the United States District Court for the District of New Jersey an order temporarily restraining the Secretary of the Navy and his subordinate officers from interfering with the proposed sale of the assets of the bankrupt or from the use of the assets by any purchaser thereof (Transcript, pp. 18a-25a). At the hearing for sale, and before the return of the order to show cause why such temporary restraint should not be made permanent, bids were submitted for the assets in possession of petitioner, and the highest bid was in the sum of \$165,000.00, for the business as a complete unit, free and clear of all claims, liens and encumbrances (Transcript, pp. 26a-37a).

12. Because of the publicity which was incidental to the requisitioning of the property in petitioner's possession, prospective bidders who had theretofore manifested a keen interest in acquiring the business and the assets of the bankrupt as a complete unit and going concern for a

sum substantially in excess of \$165,000.00 refrained from participating, considering their bids to be a mere futility.

13. Thereafter, the United States of America filed a petition with the District Court for an order directing petitioner to deliver possession of the property requisitioned (Transcript, pp. 38a-39a). After argument before the District Court on this petition and on the application of the Trustee for confirmation of the sale (Transcript, pp. 43a-59a), a memorandum opinion was handed down (Transcript, pp. 3a-4a) in which the Court said:

“This memorandum is not presented as an exhaustive study of the questions raised by the receiver. The emergency which is conceded to exist will not permit of an extensive discussion of the questions at this time. The basic question as to the right of the Chief Executive to remove the property in question from the custody of the Court of Bankruptcy is not determined.”

An order was thereupon entered granting the petition of the United States, for leave to remove from the custody and possession of petitioner the machinery and equipment which was the subject matter of the requisition, vacating the temporary restraint which the Court had previously issued and relegating petitioner or his successor trustee to a claim for compensation and damages by reason of the requisitioning and taking of said property and directing the institution of such proceedings for the protection of the rights of all creditors of the bankrupt (Transcript, pp. 5a-7a).

14. Petitioner contends that the determination by the Circuit Court of Appeals below was erroneous and violative of his constitutional rights and in direct conflict with the

decisions of this Court, all of which are more particularly hereinafter set forth.

15. This is a petition for a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Third Circuit, and the questions presented for determination upon this petition are set forth in Appendix "B" hereunto annexed.

Reasons Relied Upon for Allowance of the Writ.

1. This case presents questions of constitutional law arising out of the determination in the Courts below, and, which in the first instance found its basis primarily in expediency rather than in legal foundation. Consideration and determination of these questions by this Court is necessary for the future guidance of the various Federal Courts throughout the land.

2. The determination of the United States Circuit Court of Appeals for the Third Circuit in affirming the order of the District Court was in disregard of the rights of petitioner as receiver in bankruptcy and as an officer of the Bankruptcy Court to exclusively liquidate the assets of the bankrupt in the manner provided for by the Bankruptcy Act.

3. Petitioner contends that the Bankruptcy Court having assumed jurisdiction over the *res* upon the filing of the petition in bankruptcy, that such jurisdiction to exclusively deal with the property which had passed into its custody could neither be impaired nor could it be divested thereof by any other branch of the government. This contention is

strengthened by the concession of the government in its brief filed with the United States Circuit Court of Appeals for the Third Circuit in the cause, in which it said:

“It is assuredly fundamental and indisputable that the jurisdiction of the Bankruptcy Court to dispose of the assets of the bankrupt is exclusively within the Court which has the custody of the estate, and, of course, the Court may protect its custody.”

4. It is respectfully submitted that the determination by the United States Circuit Court of Appeals for the Third Circuit is erroneous and not in accord with the principles of applicable decisions in this Court in the following cases:

Mueller v. Nugent, 184 U. S. 1, 7 A. B. R. 224;
Isaacs v. Hobbs, 282 U. S. 734, 75 L. Ed. 645;
Straton v. New, 283 U. S. 318, 75 L. Ed. 1060.

And, also contrary to:

U. S. v. Wood, 290 Fed. 109 (C. C. A. 2nd Cir.).

5. This Court has ruled that once the Bankruptcy Court acquires custody of property, it may protect that custody in a summary manner, by injunction, and that the right of the Bankruptcy Court was inherent, in it, to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction.

Steelman v. All Continent Corp., 301 U. S. 72;
 81 L. Ed. 1085;
Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Railway Co., 294 U. S. 648, 676; 55 Sup. Ct. 595; 79 L. Ed. 1110;
Ex parte, Baldwin, 291 U. S. 610, 615; 54 Sup. Ct. 551; 78 L. Ed. 1020;
Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300;

Everett v. Judson, 228 U. S. 474;
U. S. F. & G. Co. v. Bray, 225 U. S. 205; 32 Sup.
 Ct. 620; 56 L. Ed. 1055.

6. The ruling by the Circuit Court of Appeals below in the case *sub judice* sustaining the order vacating the injunction against the interference with the property which was the subject of the requisition is in apparent conflict with the decisions of this Court in the cases just cited. The decision is also in apparent conflict with the ruling in re

Converse v. Highway Construction Co., 107 Fed.
 (2d) 127 (C. C. A. 6th Cir.);
In re Schermerhorn, 145 Fed. 341 (C. C. A. 8th
 Cir.).

And, contrary to its own decision in re

Roberts Auto & Radio Supply Co. v. Dattle, 44
 Fed. (2d) 159.

7. Petitioner contends that the property of the bankrupt estate having passed within the conceded and indisputable exclusive province of the Bankruptcy Court to fix the value of the property which had thus passed into its lawful custody and which it had never surrendered. Under the determination by the Court below, petitioner was relegated to an adjudication by the Court of Claims of the United States with respect to the value of the property requisitioned and taken, which ruling is in apparent conflict with the decision of this Court in re

U. S. F. & G. Co., v. Bray, *supra*,

where this Court said that the jurisdiction of the Bankruptcy Courts and all proceedings in bankruptcy "is intended to be exclusive of all other Courts * * *".

8. The ascertainment of compensation is a judicial function, and no power exists in any other department of the government to declare what the compensation shall be, or to prescribe any binding rule in that regard. It is plainly discernable from the record that the Office of Price Administration by the imposition of restrictive price regulations has usurped judicial functions and has unduly extended its activities to the point where the Bankruptcy Court is prevented from selling assets which have come within its custody and control for administration and liquidation for the fair market value thereof.

9. To the extent that the decision below sustained the requisition, upon the theory that the determination that an emergency exists sufficient to justify the taking, cannot be reviewed, it is in apparent conflict with the decision of this Court in re

~~National~~ ^{Mitchell} v. *Harmony*, 54 U. S. 115, 126, 134; 14 L. Ed. 75,

which involved the taking of private property during the Mexican War; and, in which case this Court held that the emergency must be shown to exist before the taking can be justified. That a national emergency existed is not denied. Petitioner made every effort to effect a sale of the business of the bankrupt as a going concern, to the end that the same might produce the articles for which it was equipped. The taking of the major portion of the property of the bankrupt under the requisition approximately four days prior to the hearing on the application to consider the proposal sponsored by the government through its agency, destroyed the business as a complete unit and going concern and was

a violation of the rights of the creditors whose interests petitioner was in duty bound to at all times protect.

10. The Circuit Court of Appeals below, in rendering its decision, has decided important questions in a way untenable and in conflict with great weight of legal authority, and is in conflict with the Fifth Amendment to the Constitution of the United States.

11. In the interests of brevity (Rule 38, Paragraph 2), petitioner restricts further discussion on these points, but in order to comply with the rules of this Court, which require that all issues upon which decision is requested be presented in the petition for certiorari, petitioner here refers to and incorporates in this petition all of the matters presented to the United States Circuit Court of Appeals for the Third Circuit in the transcript of the record on appeal, with the same force and effect as if herein set out in full.

WHEREFORE, petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day to be therein named, a transcript of the record and proceedings herein; and, that the decree of the United States Circuit Court of Appeals for the Third Circuit be reversed by this Honorable Court; and, your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MAX L. ROSENSTEIN,
Counsel.

